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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,951	06/08/2004	Fred Richard Herndon		3950

7590 09/20/2006  
Fred Richard Herndon  
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EXAMINER

HAWK, NOAH CHANDLER

ART UNIT PAPER NUMBER

3636

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/709,951	Applicant(s) HERNDON ET AL.	
	Examiner Noah C. Hawk	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner. .
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/8/04</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing address of each inventor. A mailing address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing address should include the ZIP Code designation. The mailing address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

It does not identify the city and either state or foreign country of residence of each inventor. The residence information may be provided on either an application data sheet or supplemental oath or declaration.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: the claim should set forth the structural elements and limitations that the applicant considers his invention and should not include statements directed to the problem the claimed invention will solve. For example, the following phrases should be omitted: "the embodiment of the said canopy solves the age-old problem of heat reduction internal to a vehicle, particularly a large RV or SUV without causing a wind shear problem from gale force winds," "the elimination of a major wind shear problem associated with structures large enough to cover a recreational vehicle of great length," and "designed to elimination of the lightning rod effect by not using frames and stays that could attract lightning that is a major cause of damage to a recreational vehicle." Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The phrase "extrusions pre-mounted at upper sides of a recreational vehicle" renders the claim indefinite. The claim presents an "RV Portable Sunscreen Canopy" but goes on to recite elements of the RV itself. It is unclear whether the applicant is claiming the canopy (and components thereof) alone or the combination of the canopy and RV.

b. The phrases "which is slightly larger than the roof of the target vehicle" and "at the upper sides of a recreational vehicle" render the claim indefinite. Because RVs come in different shapes and sizes, these recitations do not amount to a finite structural definition of the size of the cloth or the location of the mounting elements.

c. The phrase "or the like" in section (b) renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

- d. The phrase "such as" in section (b) renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
  - e. Section (c) of the claim renders the claim indefinite because it is unclear whether the limitations included in that section are part of the claimed invention. See MPEP § 2173.05(d). For the purposes of examination, section (c) will not be given any patentable weight.
5. Claim 1 recites the limitation "the taped and sewn or glued ends and sides of the rectangular flaccid cloth" in section (f) of the claim. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: there is insufficient structural description of the "extrusions" attached to the vehicle for someone of ordinary skill in the art to understand how the tent poles are related to the extrusions during use. Further, it is unclear whether the term "extrusion" is used simply to name the mounting element or if it is intended to impart a structural definition to the element. For the purposes of examination, the "mounting extrusions" shall be treated as mounting elements and the term "extrusion" will not be treated as limiting the elements to being made of an extruded piece of material.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: elements meant to perform functions listed in sections (d), (e) and (g) of the claim. If these sections merely recite functional language, they should be removed. For the purposes of examination, these sections will not be given any patentable weight. It is recommended that the applicant look to the references cited (to follow) for examples of proper claim construction and language.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Becker in US Patent 4684165. Becker teaches a flaccid porous cover (20, see, Becker, Column 2, line 67 through Column 3, line 1) having a grommet (44) and attached to the ends of tent poles (16, 18) that are mounted in mounting elements (42) by a bungee cord (22/24- the fact that the bungee cord stretches the cover over the end of the “tent pole” is considered sufficiently attached over the end).

**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Riggi, Jr., Sanders, Lahutsky, Spinella et al., McAndrew, Bourgoin, and Wade et al. teach vehicle covers. Ogle, Sr. teaches a canopy for a boat. Quinan et al. teaches a temporary canopy.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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